IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.7891 OF 2004

M/s.V.R.Constructions .. Petitioner

Versus

The Municipal Corporation of

the City of Thane and Ors. .. Respondents.

Mr.Y.S.Jahagirdar, Senior Advocate i/b.Gauri Godse for petitioner

Mr.R.S.Apte, for respondent No.1

Mr.J.S.Pawar for respondent No.2.

CORAM : A.P.SHAH AND

S.C.DHARMADHIKARI, JJ.

DATE : 4TH OCTOBER 2004.

P.C.

1. Heard parties.

2. Petitioner is a partnership firm. It is seized and possessed of immovable property situate at Naupada, Taluka and Dist.Thane bearing Tikka No.32, City Survey No.62 admeasuring 429.59 together with structure standing thereon. (hereinafter referred to as the said property).

3. It is aggrieved by an order passed by the Appellate authority in exercise of powers under section 47 of Maharashtra Regional Town Planning Act, 1966. (hereinafter referred to as MRTP Act). This order is passed in an appeal directed against the decision of respondent No.1 Municipal Corporation taken on 7th September 2002 rejecting petitioners' application for approval of building plans.

4. It is not in dispute that by a development agreement as well as power of attorney, petitioner granted development rights in respect of the said property to Raunak and Company. Pursuant to development agreement and power of attorney, an application dated 15th July 2002 was submitted along with building plans to respondent No.1. This application was for

approval of the Corporation to the proposed development of the said property. It is the case of petitioner that they are entitled to the benefit of Appendix "R" as substituted by notification dated 4th October 1999. It is their case that by this notification clause I(a) and (b) of Appendix "R" of Regulation No.165 of D.C.Rules for Thane were substituted. It is their case that as per clause 1(b) of original Appendix "R", F.S.I. was allowed for development proposals for re-construction or re-development of building destroyed by fire, collapsed/demolished etc. They contend that clause 1(b) allowed F.S.I. for such proposals as F.S.I. permissible under the regulation or F.S.I. consumed by existing building whichever is more and in addition to available F.S.I., 15% additional F.S.I. was allowed as an incentive to the owner.

5. It is pointed out that as per clause 1(c) of Original Appendix "R", reconstruction as stated in the said Appendix was allowed in respect of the building existing prior to 4th November 1974 for the areas covered under the

sanctioned development plan of the erstwhile Municipal Corporation limits and on 16th August 1973 for the remaining areas including the Corporation limits. It is pointed out that as per the notification referred to above, redevelopment outside congested area is allowed with F.S.I. equivalent to that already authorisedly utilised plus 50% of the pemissible F.S.I. or 2.00 whichever is more provided the total F.S.I. of the new structure shall not exceed 3.00.

6. Petitioner based their case on the F.S.I. granted to adjoining land i.e. C.T.S.No.61. It is their case that this land is owned by one R.K.Karia. A combined building plan for Survey Nos.61 and 62 (subject property) sanctioned on 31st January 2002 grants 2.00 F.S.I. to Sr.No.61. Petitioner submits that pursuant to benefits under original appendix "R", the said property was granted F.S.I. 1.15 in the year 1997 and occupancy certificate was granted on 4th April 1998. It is their case that since the combined building proposal was sanctioned and 2.00 F.S.I. was claimed for C.T.S.No.61,

petitioner is entitled to additional F.S.I. for the said property pursuant to the notification dated 4th October 1999 (Exh.E). However, the building proposal submitted by the petitioner has been rejected. While rejecting this proposal respondent No.1 has observed that part occupation certificate was granted in respect of the said property on 19th January 1998 and on 4th April 1998 the said property was granted full occupation certificate. Since, occupation certificate was granted in respect of the said property prior to 4th October 1999, according to respondent No.1, petitioner was not entitled to the benefit of the notification dated 4th October 1999 and consequently amended Appendix "R". It is pertinent to note that by this order petitioners' combined proposal for sanction of building plans in respect of C.T.S.Nos. 61 and 62 was rejected.

7. Aggrieved and dis-satisfied with the decision of respondent No.1, petitioner carried the matter in appeal to State Government and by the impugned order, the State Government has upheld the decision of respondent No.1. These

orders are under challenge in this petition under Article 226 of the Constitution of India.

8. Shri Jahagirdar, learned Senior Counsel for petitioner submits that there is nothing to show that applicability of benefit of amended Appendix "R" cannot be given to building constructed as per unamended Appendix "R". He submits that the notification dated 4th October 1999 mentions that by letter dated 10th March 1997, planning authority had informed the State Government that provision made of extra F.S.I. in the amended Appendix "R" for re-construction of building declared as dangerous was inadequate. The State Government by acting upon this letter issued an order dated 27th October 1997 directing the planning authority to initiate proposal for modification to regulation No.165 of Appendix "R". He submits that original Appendix "R" was modified by notification dated 4th October 1999 only because it was accepted by the planning authority as well as the State Government that benefit given by original Appendix "R" to buildig declared as dangerous was wholly inadequate. Therefore, it is obvious that while modifying

original Appendix "R" by the said notification, buildings for which extra F.S.I. was granted under original Appendix "R" are not excluded from the applicability of the modified provisions. That apart, he submits that insofar as the adjoining property is concerned, respondent No.1 has approved the building proposals and granted F.S.I. 2.00. He submits that once the building proposal was composite, then, the benefit granted in respect of adjoining property ought to have been granted in respect of the said property. Therefore, there is discrimination writ large in the actions of respondent No.1. Consequently, its order was liable to be set aside in appeal. Since the appellate authority has failed to exercise its jurisdiction and correct the decision of respondent No.1, its order is liable to be quashed and set aside.

9. Shri Apte, learned Counsel for respondent No.1 on the other hand submits that respondent No.1 as well as State Government are wholly right and have committed no error while observing that once part occupation certificate and complete O.C. have been granted in respect of the subject

property prior to 4th October 1999, then, the benefit of the amended provisions cannot be claimed. He submits that merely because in respect of C.T.S. No.61 F.S.I. of 2.00 has been granted, does not mean that retrospective effect should be given to the notification in respect of the said property. He submits that these are decisions taken by planning authorities after due deliberation and keeping in mind the interest of citizens and public at large. These decisions are taken by experts in the field. Unless it is demonstrated that the decision is palpably erroneous, arbitrary, irrational or malafide, this Court cannot interfere in exercise of its jurisdiction under Article 226 of the Constitution of India. More so, on the ground that another view of the matter is possible. In matters of planning, decisions of experts are not liable to be substituted with the views of this Court. Therefore, the petition should be dismissed.

10. With the assistance of learned Counsel, we have gone hrough the notification as well as the impugned orders.

11. Relevant part of the notification dated 4th October 1999 reads thus:-

> " Now, therefore, in exercise of the powers conferred by sub-section (2) of section 37 of the said Act and all other powers enabling in that behalf the Government of Maharashtra hereby (A) Sanction the said modification, whereby following provision shall be substituted for clause 1(a) (b) of Appendix "R" of the said regulations as given below:-
>
> (a) These provisions shall be applicable to following proposals:-
>
> (i) Reconstruction/Re-development schemes undertaken by the Corporation/owners for the existing authorised residential development.
>
> The FSI to be allowed for such

proposal shall be FSI permissible under these regulation or the FSI consumed by the existing authorised building whichever is more. In addition to this 15% additional FSI shall be allowed as an incentive to the owner.

Reconstruction/Redevelopment of buildings destroyed by fire, collapsed, demolished etc.

Reconstruction in whole or in part of a building (not being a building wholly occupied by warehousing user) on or before reference date as specified in 1(c) below and which has ceased to exit in consequence of accidental fire, natural collapse or demolition for the reason of the same having been declared unsafe by or under a lawful order of the Commissioner.

(a) Redevelopment outside congested area shall be allowed with an FSI

equivalent to that already authorisedly utilised plus 50% of the permissible FSI or 2.00 whichever is more provided the total FSI of the new structure shall not exceed 3.00.

Redevelopment within the congested area shall be allowed with an FSI equivalent to that already authorisedly utilised plus 60% of the permissible FSI provided that the total FSI of the new structure shall not exceed 3.00.

(b) The Committee comprises of Commissioner (TMC), Superintending Engineer, Engineer, Public Works Department, Thane, Dy.Director Town Planning Konkan Division shall be set up and the said committee decide the building which are dangerous and dilapidated.

12. We are of the opinion that in such matters, the decision of authorities not to grant

benefit of amended provisions to projects which have already been completed cannot be faulted. Once it is clear that part occupancy certificate and full occupancy certificate in respect of buildings on C.T.S. No.62 have been granted prior to 4th October 1999 and the instance (C.T.S. 61) is not comparable in all respects, then, the view taken by the authorities cannot be set aside. The appellate authority has applied its mind to these aspects and observed that as an incentive for re-construction of buildings which are old and dilapidated, additional F.S.I. was permissible. It has taken into consideration the fact that development permission was granted in respect of the subject property on 24th September 1996 and occupation certificate was granted on 4th April 1998. The Government has applied the notification from 4th October 1999. In the present case, once occupation certificate in respect of the construction on the subject property has been granted before the date of notification, then it cannot be granted benefit of additional F.S.I. The view taken by the appellate authority that the benefit of the notification can be granted to such proposals

where construction work is incomplete or is in progress has not been demonstrated. It has been pointed out that notices have been issued to parties in respect of dangerous structures and buildings. Once, such parties have expressed their willingness to reconstruct and their projects were incomplete on the date of the notification in question, then, they alone are entitled to the benefit is the view of the appellate authority. In our opinion, such a view is in consonance with the notification and an interpretation placed thereon by the authorities cannot be said to be absurd.

13. The benefit of additional F.S.I. is an incentive to owners of dangerous structures for re-construction thereof. It is to obviate difficulties of Tenants/ occupants of such structures. Further, owners of such structures and buildings which are old, dilapidated and dangerous require some incentive for re-construction and re-development. This object and purpose is sought to be achieved by amending Appendix "R". The amended provisions, therefore, must be held to be applicable only to the

projects which are either incomplete or under process on the date of notification. The view taken by the authorities is in public interest and it balances need for re-construction of dangerous and dilapidated structures and avoiding congestion in developed suburbs like Thane. We should not interfere in such matters unless it is demonstrated that the decisions are wholly arbitrary, irrational, discriminatory or malafide. The classification as made, has nexus with the purpose and object sought to be achieved by issuance of the notification. Petitioner has no right for additional F.S.I. after the development on the said property is complete. There is no substance in the plea of discrimination either.

In the result, petition fails and is accordingly dismissed. No costs.

******